

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 14, 2006

Agenda ID # 5423

TO: PARTIES OF RECORD IN APPLICATION 04-07-020

This is the draft decision of Administrative Law Judge (ALJ) Weissman. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ WEISSMAN** (Mailed 3/14/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of the
SOUTHERN CALIFORNIA WATER COMPANY
(U 133 W) Regarding Low Income Assistance
Programs for its Bear Valley Electric Service
Customers for Program Year 2005.

Application 04-07-020
(Filed July 8, 2004)

**OPINION IN RESPONSE TO THE PETITION FOR MODIFICATION OF
DECISION 05-07-014 FILED BY GOLDEN STATE WATER COMPANY
FOR ITS BEAR VALLEY ELECTRIC SERVICE CONCERNING
LOW INCOME PROGRAM FUNDING FOR 2005 AND 2006**

Summary

In the underlying application, Bear Valley Electric Service (Bear Valley) proposed a budget of \$82,825 for its 2005 Low-Income Energy Efficiency program. However, by the time a decision was issued in July 2005 authorizing its funds as requested, Bear Valley had apparently already spent more than that amount. Bear Valley continued to spend sums in excess of its authorized amount and filed its Petition for Modification on December 30, 2005, seeking an increase in its 2005 budget from \$82,825 to \$177,160. We deny this part of Bear Valley's request because to do otherwise would constitute retroactive ratemaking. However, we modify Decision (D.) 05-07-014 to authorize Bear Valley to spend up to \$177,160 for Low-Income Energy Efficiency program activities in 2006.

Background

Golden State Water Company (Golden State) owns and operates Bear Valley, which is the electric distribution system serving the Big Bear Lake area in the San Bernardino Mountains. In addition, Golden State operates 39 separate water systems within 75 communities in California, serving approximately 250,000 customers. Bear Valley serves approximately 22,000 customers in what is primarily a resort community. About 93% are residential customers, and of those, two-thirds are part-time residents (vacation or seasonal homes) and one-third (7,000 customers) are full-time residents.

Until 2002, Bear Valley did not have a low-income energy efficiency program. Bear Valley does not collect public goods funds or any other funds to fund Low-Income Energy Efficiency efforts. In 2002 and 2003, the utility's Low-Income Energy Efficiency program was financed solely by the California General Fund pursuant to Senate Bill (SB) X1 5. In D.03-12-016, the Commission approved Bear Valley's Low-Income Energy Efficiency budget in the amount of \$414,885, which was to be entirely derived from SB X1 5 funds. However, the Commission recognized that the SB X1 5 funds might not remain available, and in Ordering Paragraph 3, ordered that, "should all or part of remaining SB X5 funding be rescinded, then the utilities may file emergency applications to modify today's adopted program targets and budgets, raise rates, or a combination of both in order to continue their [Low-Income Energy Efficiency] programs at a reasonable level of effort to serve their low-income customers in [Program Year] 2004."

In January 2004, the SB X1 5 funds were withdrawn, but Bear Valley did not petition either to eliminate its program or to tap another funding source. Instead, Bear Valley filed an advice letter seeking approval of a one-way

balancing account to continue its Low-Income Energy Efficiency program activities. The Commission has neither approved nor rejected the creation of the proposed balancing account.

In July of 2004, Bear Valley filed Application 04-07-020 requesting a significantly reduced budget of \$82,825 for its 2005 Low-Income Energy Efficiency program. The utility states that this was in response to its experience during the 2002/2003 program years and its comparison of Low-Income Energy Efficiency budgets for other all-electric investor-owned utilities relative to revenues, and came after Bear Valley representatives consulted with staff members of the Energy Division and Division of Ratepayer Advocates (DRA).

On November 19, 2004, Administrative Law Judge (ALJ) Thomas informed the Small and Multi-Jurisdictional Utilities (via email to the Service List) that she would not issue a 2005 funding decision prior to the beginning of the year. When the Commission approved funding for 2004 in D.03-12-016, it directed that the funding levels for 2004 remain in effect until further order of the Commission (Ordering Paragraph 1).

Bear Valley began 2004 with a stock of refrigerators that it had purchased with SB X1 5 funds. In 2004, Bear Valley only spent \$46,292 of its \$414,885 budget, and then continued its 2004 program and budget into 2005 in an effort to finish installing the remaining SB X1 5 refrigerators. The utility does not explain how it determined that it had any funds available for these activities, since all of its approved funds for 2004 were derived from SB X1 5, and those funds were no longer available. Bear Valley states that it assumed that there were unused funds from the 2004 budget that would be available for its use until the Commission issued a decision for 2005.

In D.05-07-014, the Commission approved a budget of \$82,825 for Bear Valley's 2005 Low-Income Energy Efficiency program. It also concluded that unfunded SB X1 5 dollars could not be carried forward for use in future years, since the money was no longer available. Bear Valley states that after the decision was approved, it held discussions with Energy Division staff members and stated that it assumed that there were two separate programs operating in 2005 (the continued 2004 program and the 2005 program). After review and further discussions, Bear Valley concluded that it should file this petition to modify D.05-07-014.

The following table reflects Bear Valley's approved budget for 2005:

Table 1
Bear Valley Electric Service 2005 LIEE Program Budget

Program Costs	
Energy Education	\$ 2,750.00
Lighting	\$ 12,500.00
Refrigerators	\$ 50,500.00
Weatherization	\$ 825.00
Subtotal Program Costs	\$ 66,575.00
Administrative Costs	
Outreach	\$ 2,500.00
General	\$ 5,750.00
Inspections	\$ 1,500.00
Reporting/Compliance	\$ 3,500.00
Tracking System	\$ 3,000.00
Subtotal Administrative Costs	\$ 16,250.00
Total	\$ 82,825.00

Bear Valley now asks to increase its 2005 funding from \$82,825 to \$177,160. It filed this request on the second-to-last day of the year and said that it needed the increased funding in order to continue its 2005 program through the end of

the year. The table, above, supports a program designed to treat 85 homes. In Table 2 below, Bear Valley provides a revised 2005 budget designed to treat 200 homes. Very little of the additional funds (\$4,750) would be required for administration.

Table 2
Bear Valley Electric Service 2005 LIEE Program Budget

Program Costs	
Energy Education	\$ 6,000.00
Lighting	\$ 28,835.00
Refrigerators	\$ 118,825.00
Weatherization	\$ 2,500.00
Subtotal Program Costs	\$ 156,160.00
Administrative Costs	
Outreach	\$ 3,000.00
General	\$ 6,500.00
Inspections	\$ 3,000.00
Reporting/Compliance	\$ 5,500.00
Tracking System	\$ 3,000.00
Subtotal Administrative Costs	\$ 21,000.00
Total	\$ 177,160.00

DRA filed a response to the petition on January 19, 2006, objecting to the lack of detail supporting Bear Valley's proposal, and asking that the Commission require the utility to make a supplemental filing.

Discussion

As of January 1, 2004, Bear Valley had no funds for the implementation of a Low-Income Energy Efficiency program. That is because all of its approved expenditures were to come from SB X1 5 funds, and those funds had been withdrawn. The Commission had anticipated this problem and had encouraged Bear Valley to return to the Commission for a budget augmentation if the

statutory funds were to disappear. Bear Valley did not do that. Instead, it continued to spend money. Despite all of this, Bear Valley concluded that it had permission to continue spending in 2005, both because it assumed that unspent portions of its original 2004 allocation (the allocation that went to zero when Bear Valley lost its SB X1 5 funds) would carry over into the new year, and because it understood that Commission had allowed the 2004 budget to apply to the next year in the absence of a contravening Commission order.

In its 2005 budget request, Bear Valley only asked for \$82,825, and the Commission approved the full request. Bear Valley continued to spend money even after it had exceeded its proposed budget, even though the decision approving the 2005 budget was explicit in prohibiting the utility from relying on any “carry over” funds from 2004. It then waited until the very last business day of the year to request greater funds for 2005, with no possibility that the Commission could help them out until the year was over.

On August 3, 2004, Bear Valley had requested the approval of a one-way balancing account to track its expenditures, and suggests that the existence of this balancing account protects its ability to recover its full expenditures for 2005. The Commission has never acted on that request. However, even if it were approved, the balancing account would not enable Bear Valley to track and recover unauthorized expenditures. As proposed by Bear Valley, the Preliminary Statement would have included the following language: “Any actual program costs in excess of the amounts authorized by the Commission are not recoverable.” Since Bear Valley was only authorized to recover \$82,825 in 2005, the expenditures beyond that amount are not recoverable.

The Commission cannot retroactively change Bear Valley’s funding authorization for 2005, and the existence of a one-way balancing account would

do nothing to overcome this limitation. As the Commission stated in D.92-03-094 at p. 7:

“It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking.”

Since the Commission did not authorize Bear Valley to employ a balancing account to allow for recovery of expenses in excess of \$82,825, the rule against retroactive ratemaking applies. The fact that the utility filed a Petition for Modification hours before the end of 2005 does nothing to cure this deficiency.

Although we applaud Bear Valley for its efforts to accelerate its Low-Income Energy Efficiency program activities, we urge the utility to become more diligent in taking the necessary steps before this agency on a more timely basis.

Implicit in Bear Valley's request to increase funding for 2005 is a request for an identical increase for 2006, since the utilities were authorized the same funding level for both years. Although it is too late to do anything for 2005, we can and will approve the propose funding increase for 2006. Bear Valley has demonstrated that it could reasonably use the additional funds to increase its program penetration without adding significantly to administrative costs.

DRA expresses concern that Bear Valley has not offered evidence about ratepayer impacts. The concern is well placed. However, considering the modest amount of money involved in this request, we are hesitant to require work that would cause the company to incur additional regulatory expense. We make the following observations based on the limited information before us.

Bear Valley requests an additional \$94,335 for 2006. With approximately 22,000 customers, this represents an estimated per-customer impact of \$4.29, per year. Since most of the customers are seasonal customers, this cost would be spread out over a shorter period. Although this amount is not trivial, it is modest when compared to typical annual or seasonal electricity costs. We will allow Bear Valley to spend within the requested funding authority for 2006, and we will revisit the appropriate level for this utility for future years when we review Bear Valley's new application to be filed by June 1, 2006.

Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Steven A. Weissman is the assigned ALJ in this proceeding.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____.

Findings of Fact

1. Bear Valley has spent more than it was authorized to spend for Low-Income Energy Efficiency program activities in 2005.
2. It is too late for Bear Valley to receive a funding augmentation for 2005.
3. Increasing Bear Valley's Low-Income Energy Efficiency program funding authorization for 2006 to \$177,160 should enable the utility to treat a significantly larger number of homes while having a modest impact on rates.

Conclusions of Law

1. It would constitute retroactive ratemaking to increase Bear Valley's funding authority for its Low-Income Energy Efficiency program activities in 2005, and this request should be denied.

2. Bear Valley's request for authorization to spend up to \$177,160 for its Low-Income Energy Efficiency program activities in 2006 should be granted.

O R D E R

IT IS ORDERED that:

1. Bear Valley Electric Service's (Bear Valley) request to modify Decision (D.) 05-07-014 by increasing the utility's Low-Income Energy Efficiency program funding level for 2005 is denied.

2. D.05-07-014 is modified to allow Bear Valley to spend up to \$177,160 for its Low-Income Energy Efficiency program activities in 2006.

3. Application 04-07-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.